

Before the  
Administrative Hearing Commission  
State of Missouri



PETER FORRESTER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13-0225 PH
	)	
MISSOURI BOARD OF PHARMACY,	)	
	)	
Respondent.	)	

**DECISION**

We grant Petitioner Peter Forrester a pharmacy license subject to a one-year probation.

**Procedure**

Dr. Forrester filed his complaint on February 5, 2013. Respondent Missouri Board of Pharmacy filed its answer on February 27, 2013.

We held a hearing on August 2, 2013. Dr. Forrester represented himself. Loretta Schouten represented the Board. This case became ready for decision on October 9, 2013, when the briefing period closed.

**Findings of Fact**

1. Peter Forrester held or holds pharmacy licenses in California, Nevada, and Kansas, and has been subject to discipline or denial in all three states.

### The California discipline

2. Dr. Forrester held a California pharmacy license from 1966 until May 1994. He also owned and operated a pharmacy in California until the pharmacy's permit was revoked in 1994.

3. Sometime prior to October 1985, Dr. Forrester dispensed aspirin compounded with codeine, without a prescription.

4. Based on the aspirin-with-codeine incident, the California State Board of Pharmacy revoked Dr. Forrester's license in October 1985 for violation of drug laws, stayed the revocation, and placed him on probation for three years.

5. In 1988, 1989, and 1990, Dr. Forrester claimed to dispense "dangerous drugs"<sup>1</sup> 93 times, without a prescription, and billed insurance companies for them. The drugs were never delivered to patients and never left the pharmacy from which he claimed to dispense them.

6. Based on the 1988, 1989, and 1990 incidents, the California Board of Pharmacy revoked his California pharmacy license in May 1994 for insurance fraud.

### The Nevada discipline

7. The Nevada State Board of Pharmacy revoked Dr. Forrester's Nevada pharmacy license in June 1995, based on the California revocation.

### The Kansas discipline

8. Dr. Forrester was licensed and worked as a pharmacy technician in Kansas from

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<sup>1</sup> Records from the California disciplinary proceeding include the "Accusation" and "Default Decision," both of which refer to the medications as "dangerous drugs." Respondent's Exhibit 1, Attachment, pp. 29 and 34. The Accusation includes a list of the drugs at issue: Mevacor, Naprosyn, Cipro, Axic, Clinoril, Feldene, Zantac, Tagamet, Prinivil, and Vasotec. The Missouri Board of Pharmacy did not point us to a definition of the phrase "dangerous drugs," as used in these documents. Dr. Forrester did volunteer at hearing that the phrase means drugs bearing a legend under federal law that prohibits them from being dispensed without a prescription from a physician or other licensed practitioner. Tr. 41.

2004 to 2010. His pharmacy technician license was never restricted.

9. Dr. Forrester applied for a Kansas pharmacist license in 2006. The Kansas Board of Pharmacy denied it, based on the California revocation.

10. In 2010, Dr. Forrester reapplied for a Kansas pharmacist license and the Kansas Board granted him one.

#### The Missouri application

11. To apply for a Missouri pharmacist license, Dr. Forrester filled out the Missouri Board's Official Application for Transfer of Pharmacist License, and submitted it to the Missouri Board in November 2011.

12. Under the Application section "Professional History," Question 2 asked:

Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated, or otherwise been subject to disciplinary action (public or private) by any board of pharmacy or other state authority? [<sup>2</sup>]

Dr. Forrester answered yes. Farther down on the same page of the form, under "Explanation," he stated: "Revoked 1993[.]"<sup>3</sup> On the preceding page of the application, under the section "Applicant's License," he listed his California and Nevada pharmacist licenses and noted both were "Revoked."<sup>4</sup>

13. Question 6 under "Professional History" asked:

Have you ever had any application for initial licensure, renewal licensure, or licensure by transfer denied by any licensing authority whether in pharmacy or any other profession? [<sup>5</sup>]

Dr. Forrester answered no.

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<sup>2</sup> Respondent's Exhibit. 1, Attachment p. 16.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, p. 15.

<sup>5</sup> *Id.*, p. 16.

14. At the bottom of the page containing the Professional History section, the form contained an Affidavit, which included the language:

I, Dr. Peter A. Forrester, under oath, hereby swear or affirm that I have read the foregoing paragraphs, and the information therein is complete, true, and correct. I understand that any false statements made by me in this Application may be punishable by law.<sup>[6]</sup>

Dr. Forrester swore to and signed the Affidavit before a notary public.

15. The Missouri Board later required Dr. Forrester to submit a Missouri Licensure Transfer Applicant Statement, which he did in December 2012. Question 2(a) on the Statement asked:

Have you ever ... had an application for a drug distributor, pharmacy, pharmacist, pharmacy intern, pharmacy technician, or other healthcare registration, license, permit, or certificate denied or refused in this state, or any other state or country? <sup>[7]</sup>

Dr. Forrester answered no.

16. Question 2(b) on the Statement asked:

Have you ever ... had disciplinary action taken against you, a pharmacy or drug distributor facility you owned, or a pharmacy or drug distributor facility where you were employed, by a pharmacy board or authority, or other healthcare licensing board or authority in this state, or any other state or country?<sup>[8]</sup>

Dr. Forrester answered yes.

17. Question 2(c) on the Statement asked:

Have you ever ... violated the drug laws or rules and regulations of this state, or any other state or country, or the United States?<sup>[9]</sup>

Dr. Forrester answered yes.

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<sup>6</sup> Respondent's Exhibit. 1, Attachment p. 16

<sup>7</sup> *Id.* p. 18.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

18. The Statement form contained substantially the same Affidavit language as the Application form. Dr. Forrester swore to and signed the Statement form's Affidavit before a notary public.

19. In December 2012, Dr. Forrester took the Multistate Pharmacy Jurisprudence Examination, necessary for Missouri licensure, and received a passing score.

20. On January 28, 2013, the Missouri Board issued Dr. Forrester a pharmacy license, subject to a five-year probation, due to his violations of § 338.055.2(8) and (15), RSMo.<sup>10</sup>

### **Conclusions of Law**

We have jurisdiction. §§ 338.055.1 and 621.045.1.

When an applicant appeals the denial of an unrestricted license, we exercise the same authority as the licensing agency and decide the application anew, without deference to the agency's decision. *See State Bd. of Regis. for the Healing Arts v. Trueblood*, 368 S.W.3d 259, 264 (Mo. App. W.D. 2012).

Here, the Board bears the burden of establishing that probation is appropriate, § 324.038.2, RSMo, which it must do by a preponderance of the evidence, *see State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000). A "preponderance of the evidence" is that degree of evidence that "is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows the fact to be proved to be more probable than not." *Berry*, 32 S.W.3d at 642.

The answer the Board files in an appeal before this Commission provides notice of the grounds for its decision. *See Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D. 1984).

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<sup>10</sup> All citations to "RSMo" are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

The Board in its answer points to three: Dr. Forrester’s alleged lack of good moral character, and § 338.055.2(8) and (15).

Section 338.030 provides that an applicant for licensure “shall furnish satisfactory evidence of his good moral character.”

Under § 324.038.1, when the Board has cause to refuse to issue a license on grounds that also serve as a basis for seeking discipline against a current license holder, the Board has the discretion to issue a license subject to probation, rather than refusing to issue one altogether.

Section 338.055.2, in relevant part, provides grounds for discipline in the case of:

(8) Denial of licensure to an applicant or disciplinary action against an applicant or the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, surrender of the license upon grounds for which denial or discipline is authorized in this state; [or]

\* \* \*

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

**I. § 338.030, good moral character**

We reject the ground of lack of good moral character as a basis for issuance of a license subject to probation, or in this case, as a basis for denial of licensure altogether.

**A. As a matter of law, lack of good moral character is not a ground for issuance of a probated license.**

Good moral character is a requirement of licensure under § 338.030. The lack thereof is not a basis for discipline under § 338.055.2, or any other provision of law. Therefore, neither the Board nor we can decide—pursuant to § 324.038.1—that an applicant lacks good moral character, and then issue a license anyway, even if probated. Lack of good moral character and

licensure are mutually exclusive under the statutory scheme. Accordingly, we reject the ground of lack good moral character as a basis for issuance of a license subject to probation.

**B. The Board abandoned the lack of good moral character argument as a basis for outright denial.**

The Board appears to have abandoned any argument that Dr. Forrester should be denied a license altogether.

The Board in its underlying decision did not make a finding of lack of good moral character, cite § 338.030, or decide to deny Dr. Forrester's application altogether. It decided he was entitled to a license, though one subject to probation, under § 338.055.2(8) and (15). But the Board in its answer herein includes lack of good moral character. It also alleges that Dr. Forrester could be issued a probated license, or denied a license in the alternative.<sup>11</sup> Then at the hearing of August 2, 2013, and in its post-hearing brief filed on September 9, 2013, the Board argued that lack of good moral character supports issuance of a probated license. It did not ask us to deny him a license altogether.

Based on the Board's position at hearing and argument in its post-hearing brief, we deem any argument for denial of licensure abandoned, and the Board's position that Dr. Forrester should be issued a probated license to be in the nature of an admission that Dr. Forrester does not lack good moral character. We will nevertheless substantively address the moral character issue immediately below.

**C. Dr. Forrester has good moral character.**

Because "good moral character" is a requirement of licensure, the appeal of the Board's denial of licensure on such basis shifts the burden of proof to the licensee. § 621.120, RSMo (2000). In other words, the licensee has the burden of proving he has the necessary

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<sup>11</sup> Answer, p. 4.

qualifications, including good moral character. We conclude Dr. Forrester has good moral character for purposes of § 338.030.

The primary purpose of applying regulatory standards to the professions is to protect the public. *Merwin v. State Bd. of Regis. for Healing Arts*, 399 S.W.3d 110, 116 (Mo. App. W.D. 2013); *Koetting v. State Bd. of Nursing*, 314 S.W.3d 812, 819-820 (Mo. App. W.D. 2010). The qualification of “good moral character” is not statutorily defined in § 338.030. But in the analogous context of physicians’ license cases under § 334.100, it “is generally defined as honesty, fairness, and respect for the rights of others and for the laws of the state and the nation.” *Hernandez v. State Bd. of Nursing*, 936 S.W.2d 894, 899 n.1 (Mo. App. W.D. 1997). A finding of rehabilitation can be implicit in a finding of good moral character, as in the case of a person who has committed criminal conduct but has been rehabilitated. *See State Bd. of Healing Arts v. De Vore*, 517 S.W.2d 480, 487 (Mo. App. K.C.D. 1974); *State Bd. of Healing Arts v. Finch*, 514 S.W.2d 608, 616 (Mo. App. K.C.D. 1974). An applicant who is rehabilitated acknowledges his or her past crimes or misconduct and embraces a new moral code. *Francois v. State Bd. of Regis. for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App. E.D. 1994).

We further note that in general, and by law, a licensing board may consider conviction of a felony or misdemeanor as some evidence of lack of good moral character, but the licensing board must also consider the nature of the crime in relation to the type of licensure sought, when the conviction occurred, the applicant’s conduct since the conviction, and any other evidence relevant to good moral character. § 314.200, RSMo (2000).

We conclude that a preponderance of the evidence establishes Dr. Forrester’s rehabilitation and good moral character. Plainly, the mid-1980’s drug law violations, and the



1988-1990 insurance fraud incidents relate to the licensure Dr. Forrester seeks, and the nature of that evidence is serious.

Mitigating factors include the length of time that has elapsed since then—30 and 20 years, respectively. Dr. Forrester acknowledges that the incidents were significant<sup>12</sup> and he disclosed them on his Missouri application.<sup>13</sup> He has no state or federal convictions related to those incidents, or any crimes.<sup>14</sup> He has never had a chemical dependency or alcohol impairment.<sup>15</sup> He worked in Kansas, without incident, as a licensed pharmacy technician for seven years, until 2010. He was issued a full and unrestricted pharmacist license in Kansas in 2010; has been successfully employed as a pharmacist since then; and in June 2013, after he completed 30 hours of continuing education courses, the Kansas Board renewed his license.<sup>16</sup> In his practice of pharmacy in Kansas since 2010, he has had occasion to dispense controlled substances, has worked as the only pharmacist on duty on occasion, and in April 2012, completed a Kansas education requirement qualifying him to provide pharmacy-based immunizations.<sup>17</sup> No actions have been taken against his Kansas license, and none are pending. We conclude a preponderance of the evidence establishes Dr. Forrester’s rehabilitation and good moral character for purposes of qualifying for Missouri licensure.

We note that Dr. Forrester made a misrepresentation on his 2011 Missouri application and 2012 transfer applicant statement, which we discuss below in regard to the propriety of probation. But we do not conclude that the incident demonstrates he lacks good moral character.

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<sup>12</sup> Tr. 40.

<sup>13</sup> Respondent’s Exhibit 1, Attachment p. 18.

<sup>14</sup> Tr. 19.

<sup>15</sup> Tr. 23.

<sup>16</sup> Tr. 25, 27, and 29.

<sup>17</sup> Tr. 40.

Dr. Forrester has good moral character for purposes of qualification for licensure under § 338.030.

**II. § 338.055.2(8), previous denial or discipline**

Section 338.055.2(8) provides for discipline in Missouri in the case of denial of licensure or discipline in another state, upon grounds for which denial or discipline is authorized in this state.

The California State Board of Pharmacy disciplined his license in 1985 for violation of drug laws, which is also grounds for discipline in Missouri. § 338.055.2(15). His license was revoked by the California Board in 1994, based on insurance fraud (discussed below in connection with the drug law violations), which is grounds for discipline in Missouri. § 338.055.2(5) and (13).

The Nevada State Board of Pharmacy's revocation of his license in 1995, and the Kansas Board of Pharmacy's denial of his application in 2006, were both based on the California discipline, which as discussed, were based on grounds that suffice in Missouri.

Cause for denial exists under § 338.055.1 and .2(8).

**III. § 338.055.2(15), violation of drug laws**

Section 338.055.2(15) provides for discipline in Missouri in the case of violation of Missouri drug laws or regulations, or those of any other state or the federal government. The Board argues Dr. Forrester is subject to denial under § 338.055.1 and .2(15) because of his actions in California.

The record shows that Dr. Forrester's 1985 discipline in California involved the violation of drug laws. The California Board of Pharmacy found that Dr. Forrester violated, and he admitted he violated, Cal. Bus. & Prof. Code § 4229 (West 1984), which provides:

No prescription for any dangerous drug may be refilled except upon authorization of the prescriber which may be given orally or

at the time of giving the original prescription. No prescription for any dangerous drug which is a controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code may be designated refillable as needed.

The California Board also found that he violated Cal. Health & Saf. Code § 11200 (West 1984):

No person shall dispense or refill a controlled substance prescription more than six months after the date thereof or cause a prescription for a Schedule III or IV substance to be refilled more than five times, unless renewed by the prescriber. No prescription for a Schedule II substance may be refilled.

Both of these sections explicitly deal with controlled substances, which Dr. Forrester dispensed. He violated two California drug laws.

The record also shows that between 1988 and 1990, Dr. Forrester claimed to dispense so-called dangerous drugs 93 times. The medications were never delivered to patients and did not leave Dr. Forrester's pharmacy, but he billed insurance companies for them. The California Board found that Dr. Forrester was subject to discipline under Cal. Bus. & Prof. Code § 4350.5(c) (West 1990), which provides:

The board shall take action against any holder of a ... license ... who is guilty of unprofessional conduct which has been brought to its attention ... Unprofessional conduct shall also include, but is not limited to, the following:

\* \* \*

(c) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.<sup>[18]</sup>

Unlike §§ 4229 and 11200, the California drug laws at issue in Dr. Forrester's 1985 discipline, the California law at issue in his 1994 discipline, § 4350(c), was a disciplinary law aimed at penalizing bad acts in the nature of fraud, including the insurance fraud Dr. Forrester

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<sup>18</sup>

Respondent's Exhibit 1, p. 29.

committed when he billed insurance companies for drugs that never left his pharmacy. Although the underlying factual basis for the 1994 discipline involved what the California Board referred to as dangerous drugs, the Missouri Board did not establish, by a preponderance of the evidence, that such facts establish violation of this or any other state's, or the federal government's drug laws. Accordingly, the 1994 discipline does not establish cause under § 338.055.2(15).

Cause for denial exists under § 338.055.1 and .2(15), based on the drug law violations identified in Dr. Forrester's 1985 discipline in California.

**IV. Dr. Forrester should be issued a license subject to probation.**

Under § 324.038.1, the Board has the discretion to issue a license subject to probation, in lieu of refusing to issue a license altogether, when grounds exist that would suffice as cause for discipline under § 338.055.2. Here, we exercise the same discretion as the Board. The Board argues Dr. Forrester should be issued a license subject to probation. We agree, but impose a shorter period.

We concluded above that cause exists under § 338.055.2(8), because Dr. Forrester's license was disciplined in California in 1985, based on two drug law violations, and revoked in California in 1994, based on insurance fraud. We also concluded cause exists under § 338.055.2(15), based on the two, mid-1980's drug law violations. The events are serious and related to the practice of pharmacy. They are also 30 and 20 years old, respectively. And as discussed in connection with the good moral character inquiry above, Dr. Forrester has been successful professionally since those incidents. We additionally note that he passed the Missouri licensure exam in December 2012. We agree with the Board that he is entitled to licensure. The question is whether probation is appropriate and if so, how long.

We are troubled by Dr. Forrester's misrepresentations in his Missouri license application, submitted to the Missouri Board in November 2011, and his subsequent statement, submitted in

December 2012. He stated under oath that his application for pharmacist licensure had not been denied in another state. But in fact, his 2006 application for licensure in Kansas had been denied. He agreed at the hearing herein that his answers were not true.<sup>19</sup> He explained that he “overlooked” the 2006 denial, because the Kansas Board approved his application in 2010 and the 2006 denial never came back up in 2010, so he did not think of the denial as being “significant” any longer.<sup>20</sup>

The Missouri Board *could* have concluded that—because the Kansas Board reversed course in 2010 and issued Dr. Forrester an unrestricted license, never brought up the 2006 denial again, and renewed his license in June 2013—the 2006 denial was of little or perhaps no significance. But that was not Dr. Forrester’s conclusion to make. The Missouri Board asked him to disclose any such denials and Dr. Forrester made a misrepresentation when he stated he had not been subject to any. We find more credible the explanation that Dr. Forrester wished to make his negative entanglements with other pharmacy boards appear as remote in time as possible, and so chose not to disclose the one occurring in 2006, the only relatively recent one.

Pharmacists occupy positions owing great responsibility to the public, including customers, care providers, and insurance companies. Because of Dr. Forrester’s recent misrepresentations, and in view of the nature of the California incidents for which he was disciplined, even if remote in time, we conclude a period of probation is appropriate. But we will not impose the 5-year period for which the Missouri Board asks.

We note Dr. Forrester applied for Missouri licensure in November 2011, the Board asked for supplemental material in 2012, denied his application in January 2013, and almost one year has elapsed since denial. At this point in time, and based on the record in its entirety, we

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<sup>19</sup> Tr. 33.  
<sup>20</sup> Tr. 33 and 36.

conclude that a one-year period of probation, on the same conditions the Board set out in its underlying decision, is reasonable and will serve to protect the interests of the public.

### **Conclusion**

We grant Dr. Forrester a pharmacist license, subject to a one-year probation under the conditions set out by the Board in its order dated January 28, 2013.

SO ORDERED on October 29, 2013.

*\s\ Alana M. Barragán-Scott*  
ALANA M. BARRAGÁN-SCOTT  
Commissioner